

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
JUN OIDA) : Examiner: Saeid Ebrahimi Dehkordy
Application No.: 09/650,999) : Art Unit: 2625
Filed: August 31, 2000) : Conf. No.: 2955
For: IMAGE PROCESSING CONTROLLING)
DISTRIBUTION OF WORK AMONG :
APPARATUSES BASED ON APPARATUS)
PERFORMANCE (as amended) : February 6, 2008

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE AND REQUEST FOR NEW OFFICE ACTION

Sir:

Applicant's attorneys were contacted by telephone on February 1, 2008, by the Examiner, who inquired whether a response had been filed to the last Office Action. After some discussion, and a consultation of the PAIR record for this application, it was determined that PTO records indicate that after Applicant's filing of an RCE and Preliminary Amendment on June 6, 2007, the PTO mailed an Office Action on August 6, 2007, and the Office Action of August 6, 2007, was returned to the PTO as allegedly being undeliverable. In fact, Applicant represents that his attorneys did not receive that Office Action, and learned of the existence thereof only as a result of the Examiner's call on February 1, 2008. Applicant's attorneys obtained a copy of that Office Action from PAIR (copy attached).

The Office Action of August 6, 2007

The Summary page of that Office Action correctly states that the claims pending in the application are Claims 69-77. At page 2, the Office Action states that the Preliminary Amendment of June 6, 2007, was non-responsive, in that it canceled all previously-presented claims and added new claims, which were all, in the Examiner's judgment, directed to a non-elected invention.¹ Consequently, the Office Action set "a TIME PERIOD of ONE(1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment." Notwithstanding this one-month period for response, the Summary page set a *three*-month period for response.

Moreover, then Office then continues, at page 3, with a "Detailed Action" that (a) states that Claims 38, 51, 52, 55, 59, 60 and 63-68 (all of which had in fact been canceled) are withdrawn from consideration as being directed to a nonelected invention, under 37 C.F.R. § 1.142(b), (b) then enters a rejection Claims 62 and 63 (of which Claim 63 was supposedly withdrawn from consideration, and both of which in fact had been canceled), over the prior art, and (c) states that "THIS ACTION IS MADE FINAL" (at page 8), and sets the time period for response at three months.

*The Office Action Cannot Be Understood,
And Should Be Vacated In Favor Of a New Action*

Since Applicant believes that he has previously canceled all of Claims 1-68, it is assumed that the purported prior-art rejection of Claims 62 and 63 is not in fact an issue, and

^{1/} Applicant believes that position to be plainly incorrect, since Claims 69-77 are all directed to a digital camera, and thus appear to fall squarely within elected Invention II (see page 2 of the Office Action of November 20, 2006, which imposed the restriction requirement in question).

would not need to be addressed in a response to this Office Action; this is not, however, clear from the record.

Moreover, Applicant has no way of knowing whether he would need to seek a three-month extension, or a five-month extension of time to file a response at this time.

Third, since it is also not clear whether the Office Action is final or non-final, Applicant has no way of being sure whether a response filed without a Notice of Appeal would avoid abandonment.

For all these reasons, Applicant submits that it would be improper to require him to attempt a response to this Office Action in its present form, and respectfully requests that the Action be vacated, and a new, corrected Office Action mailed. If a response is nonetheless required, then this paper should be deemed to be as complete a response as Applicant is in a position to make.

Finally, while Applicant does not believe, under these circumstances, that he should be charged for an extension of time, for a Notice of Appeal or for a petition to revive an abandoned application, any fee that the PTO deems to be required should be charged to Deposit Account 06-1205. If either a Notice of Appeal or a petition to revive is deemed to be required, again, this paper should be deemed to be a Notice of Appeal from the final rejection of all rejected claims, or a petition to revive the application, as the case may be.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

/Leonard P Diana/
Leonard P. Diana
Attorney for Applicant
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

FCHS_WS 1958051v1